HIGH COURT OF UTTARACHAL AT NAINITAL.

Writ petition No. 492(S/S)2006

Smt. Kaushalya Naithani W/o Sri Anil Naithani,
Resident of village Kandai, Gram Panchayat Revdi,
Block Khirshu, Tehsil Srinagar,
District Pauri Garhwal. ---- Petitioner.

Vs.

1. State of Uttaranchal through Secretary,
Education, Uttaranchal, Dehradun,
2. Block Education Officer, Khirsu Pauri Garhwal,
3. Gram Shiksha Samiti,
Gram Panchayat Revdi, Block Khirsu,
District Pauri Garhwal, Through its,
Chairman/Pradhan,
4. Kuldeep Pant S/o Sri Chakradhar Pant,
Resident of village Revdi Talli,
Patti Kathulsyun, Pauri Garhwal. ----Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioner.
Learned Standing Counsel for the State of Uttaranchal/respondent no.1 & 2,
And Sri R.R. Nautiyal, learned counsel for respondent no. 4.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner. learned Standing Counsel for the State Uttaranchal/ respondent nos. 1 & 2 and Sri R.P. Nautiyal, learned counsel for respondent no. 4.

2. This writ petition has been filed by the petitioner for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned orders dated 18.03.2006 & 29.03.2006 (annexure nos. 15 & 17 to the writ petition), passed by Block Education Officer, Khirsu, district Pauri

Garhwal-respondent no.3 and Pradhan, Gram Panchayat Revdi, Block Khirsu, District Pauri Garhwal-respondent no. 4 respectively,

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to pay the honorarium to the petitioner for her engagement as "Shiksha Mitra" in Primary School, Revdi, Gram Panchayat Revdi, Block Khirsu, District Pauri Garhwal. since the date of her joining,

iii. Pass any other and further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,

iv. Award the cost of writ petition to the petitioner.

3. Submission of the learned counsel for the petitioner is that the petitioner is residing in village Revdi (Ghasiya Mahadeo), Block Khirsu, Tehsil Srinagar, District Pauri Garhwal. An advertisement was issued for engagement on the post of "Shiksha Mitra" in Primary School Khirsu, District Pauri Garhwal. In pursuance of the advertisement, the petitioner and others, including the respondent no. 4, applied for the post of "Shiksha Mitra". In the application, applied for the post, the petitioner has stated that the petitioner shall submit the certificate of permanent residence, issued by the competent authority i.e. by the Sub Divisional Magistrate within fifteen days. The petitioner was engaged and she started functioning in the Institution as "Shiksha Mitra" after executing an agreement. Since the certificate of competent authority regarding permanent residence was into submitted by the petitioner within fifteen days, as per her undertakings in the application itself, the Block Education Officer, Khirsu, district Pauri Garhwal on 1st February 2006 wrote a letter to the Pradhan of

Gramsabha, Revdi that since the petitioner could not furnish domicile certificate within the prescribed period of fifteen days and he has receive some complaint that she is not domicile of Gram Panchayat Ravdi, the engagement of the petitioner may be cancelled.

4. Before the engagement of the petitioner is cancelled, one Sri Kuldeep Pant filed writ petition no. 281(ss)2006 with a prayer to issue a direction to the respondents' authorities to issue appointment to the petitioner as "Shiksha Mitra" in Primary School, Revdi, Gram Panchayat Revdi, Block Khirsu, District Pauri Garhwal. In the writ petition in paragraph 13 it is stated that after cancellation of appointment of Smt. Kaushalya Naithani as "Shiksha Mitra"(the petitioner in writ petition no. 492(ss)2006), the petitioner is legally entitled for appointment as "Shiksha Mitra" in Primary School Revdi, as he is at serial no. 2 in the panel. Hon'ble Mr. Justice Rajesh Tandon, on 04.03.2006 disposed of the writ petition with a direction to the petitioner to file a representation before the respondent no. 2 i.e. the District Basic Education Officer, Pauri within two weeks after receipt of certified copy of the order and the respondent no. 2 was directed to decide the same within two weeks thereafter. In pursuance of the order passed by this court on 04.03.2006, the Block Education Officer – vide order dated 18.03.2006 directed the Pradhan Garm Sabha Revdi to cancel the engagement of the Smt. Kaushalya Naithani and provide appointment to Sri Kuldeep Pant in the Primary School, Revdi. Consequently, Sri Kuldeep Pant, the petitioner in writ petition no. 281(ss)2006 was engaged vide order dated 31.03.2006, after cancellation of the engagement of Smt. Kaushalya Naithani on 29th March 2006.

5. The engagement earlier provided to the petitioner (Smt. Kaushalya Naithani) was upto 31st May 2006 and after cancellation of the engagement of Smt. Kaushalya Naithani, the engagement of Sri Kuldeep Pant was also upto 31st May 2006.

6. Learned counsel for the petitioner (Smt. Kaushalya Naithani) Sri Rajendra Dobhal Adv. has submitted that the Govt. Order, under which the "Shiksha Mitra" are engaged, did not speak anywhere about submitting of a domicile certificate by a candidate. The Govt. Order speaks that the applicant should be a resident of that place where the Institution situates. The husband of the petitioner (Smt. Kaushalya Naithani) is an employee of the University and she is residing with her husband since 1996. The Gram Pradhan has also issued a certificate that Smt. Kaushalya Naithani is residing in village Revdi.

7. On the other hand learned counsel for the respondent-(Kuldeep Pant) Sri R.P. Nautiyal has submitted that Smt. Kaushalya Naithani is not a permanent resident of village Revdi. Sri Nautiyal has further stated that the Govt. Order provides that only those applicant are entitled to be engaged as "Shiksha Mitra" who are residents of that Gram Panchayat. Resident means "bonafide resident" and the word 'bonafide resident' has been defined by the State of Uttaranchal in a G.O. issued on 20th November 2001. In any case, since Smt. Kaushalya Naithani could not furnish the required document thus, her engagement was cancelled and Sri Kuldeep Pant, who was at serial no. 2 in the panel, was engaged as "Shiksha Mitra" in the Institution. He has further submitted that it is undisputed that Sri Kuldeep Pant is a permanent resident of Gram Panchayat Revdi. Sri Nautiyal has further submitted that the certificate issued by the Gram Pradhan, Revdi to Smt.

Kaushalya Naithani cannot be accepted, as the Pradham himself was a candidate for the post of "Shiksha Mitra".

8. Since the engagement of Smt. Kaushalya Naithani was only upto 31st May 2006 and after cancellation of her engagement, Sri Kuldeep Pant was offered engagement as "Shiksha Mitra" which was also upto 31st May 2006, therefore, the writ petition has became infructuous.

9. The respondents are directed to pay honorarium to Smt. Kaushalya Naithani and Sri Kuldeep Pant for the period they have actually worked with the Institution as "Shiksha Mitra".

10. The respondents are further directed to offer the engagement as "Shiksha Mitra" In the Primary School, Revdi, if required, strictly in accordance with the Rules and the Govt. Orders issued in regard thereto.

11. The writ petition is disposed of accordingly.

(M.M. Ghildiyal, J.)

June 7, 2006:
NCM: